IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No. 922 of 2001.

Judgment reserved on 21st May, 2007

Date of Decision: 1st June, 2007.

Ex. Naik Shadi Lal **…..Petitioner.**

Versus

Union of India & Ors. **……Respondents.**

Coram

The Hon'ble Mr. Justice Dev Darshan Sud, Judge.

Whether approved for reporting?[1]

For the Petitioner: Mr. Onkar Jairath, Advocate.

For the Respondents: Mr. Sandeep Sharma, Assistant Solicitor General of India.

Dev Darshan Sud, Judge.

This writ petition has been preferred by the petitioner challenging the rejection of his disability pension on account of the disability suffered by him in his right eye. The undisputed facts are that the petitioner was serving with the EME Corps. in the Indian Army while in service he suffered from Peptic Ulcer and I.D. No. 2 CATARACT (RT) Eye OPTD and was boarded out of the Army. So far as the disability of Peptic Ulcer is concerned that was accepted as being attributable to army service, but the disability of the right eye was not accepted. The grievance of the

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

petitioner is that despite repeated requests and reminders, the CDA (Pension) Allahabad has disallowed the disability pension on account of deterioration of vision in the right eye.

It is not disputed before me that the petitioner was serving in the EME as an Electrician where his job involved exposure of bright core lights. Annexure P-14 is the proceedings of the medical Board which make an interesting reading. Under the first column "was not disability contracted in service; the answer is yes. The second question was "was it contracted in circumstances or over which he had no control"; again the answer is Yes. However, this condition is opined not to be attributable directly to military service. The percentage of disability has also not been specified in the Medical Certificate.

Learned counsel has placed reliance in **2007 (1) Latest Himachal Law Judgments 329** titled **Santosh Kumar** vs. **Union of India & Ors** in support of their respective contentions.

Learned counsel for the respondents submits that the Medical Certificate should be treated as having attained finality and cannot be questioned. Learned counsel for the petitioner, on the other hand submits that the Medical Certificate cannot be accepted on its face value when it does not give the percentage of disability and also does not consider the fact that his nature of employment was responsible for the onset of the disease He submits that disease was contracted after the entry of the petitioner in Army service and contracted in the circumstances over which the petitioner had no control directly attributable to the nature of his

service. In **Dilbag Singh** vs. **Union of India & Ors Latest HLJ 2005 (HP (DB) 457** This Court has held that :-

> *"……Suffice it to say in this behalf that it is very strange that without examining the person under disability, somebody sitting in the office is adjudicating upon the matter thus denying a disabled soldier, like petitioner of his property. Reason for making this observation that pension is earned by person after having put in number of years of service and also having given his best period of his life in the service of the employer. It is by now well settled that a person cannot be deprived of his property save and except by due authority/ process of law. This is the mandate of Article 300-A of the Constitution of India. It has been followed more in breach than compliance……."*

In this case a Division Bench of this Court was considering the case of the petitioner who had suffered 60% disability in both the eyes. As I have held, that the Medical Certificate clearly shows that onset of the disease was after the petitioner had entered in the service and that conditions under which the petitioner was working was such that he was exposed to extremely bright light, coupled with the fact that the Medical Certificate itself recalls that the working conditions were responsible for the disease. There can be no other conclusion except that the condition of the petitioner was attributable to working conditions while in Army Service. Further more, percentage of disability has to be assessed which has not been done. In the circumstances, the writ petition is allowed and direction is issued to the respondents to reassess the disability suffered by the petitioner in his right eye and to award pension to him in case such

disability is found to be in excess of 20%. This writ petition is allowed. There shall be no order as to costs.

(Dev Darshan Sud)
Judge.

1st June, 2007
(cm)